SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1151.

THE UNITED STATES, APPELLANT,

vs.

SAMUEL THANE POINIER.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

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Recd
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1 The United States of America, western district of South Carolina, in the district court, to wit:

At a district court of the United States for the western district of South Carolina, begun and holden at Greenville, in the district aforesaid, on the first Monday in August, 1889, before the hon'ble Charles H. Simonton, judge of the United States, for the district of South Carolina, holding said district court, according to the form of the act of Congress, in such case made and provided, the following proceedings were had:

The United States of America, western district of So. Carolina, in the district court:

SAMUEL T. POINIER, COMMISSIONER OF THE circuit courts and chief supervisor of elections for the district of South Carolina, plaintiff,
vs.
THE UNITED STATES, DEFENDANT.

Be it remembered, that heretofore, to wit, on the 8th of February, in the year of our Lord, one thousand eight hundred and eighty-nine, came into court the plaintiff, Samuel T. Poinier, by his attorney, John Wingate, and filed the following petition, which is in the words and tenor following:

2 The petition of Samuel T. Poinier respectfully shews:

1. That the full name of your petitioner is Samuel Thane Poinier, and that he is a commissioner of the circuit court, duly appointed by the circuit court of the United States, for the districts of South Carolina, and duly qualified and commissioned to act as such, and being a commissioner of the circuit court he was duly appointed chief supervisor of election for the districts of South Carolina, by the circuit court of the United States for the district of South Carolina, and has qualified and been commissioned as such.

II. That your petitioner resides in Spartanburg, in the county of Spartanburg, in said State, in the western district of South Carolina, and that his duties as chief supervisor of elections required his attendance before the circuit court of the United States for the district of South Carolina, in the city of Charleston, in the county of Charleston, in said State, in the eastern district of South Carolina.

III. That between the 5th day of October, A. D. 1888, and the 14th day of November, A. D. 1888, inclusive, your petitioner performed the duties appertaining to the office of chief supervisor of elections, for the districts of South Carolina, at the election for representatives or delegates in Congress held on the 6th day of November, A. D. 1888, and among other services rendered, he performed the duties of his office hereinafter specified, to wit:

1st. Recorded and indexed one hundred and five informations in regard to the appointment of supervisors of election, which, under section 2026 R. S., U. S., he was required to present before the circuit judge, and
3 which constituted proper records of his office, and for which services he was entitled to be paid, at the rate of 15 cents a folio for

recording, and 15 cents a folio for indexing, and in the aggregate amounting to thirty-one $\frac{50}{100}$ dollars.

2nd. Recorded and indexed one thousand and eight appointments of supervisors of election, which were made by the circuit judge, and the entering of which on the records of his office was necessary and proper, and for which services he was entitled to be paid at the rate of 15 cts. a folio for recording and 15 cts. a folio for indexing, and in the aggregate amounting to three hundred and two $\frac{40}{100}$ dollars.

3d. That in accordance with the provisions of section 2026 R. S., U. S., he prepared instructions for the use of supervisors of election, appointed for the use of the several election precincts of said State, and for said services he was entitled to be paid at the rate of 15 cents a folio, the same being sixteen folios, and amounting in the aggregate to two $\frac{40}{100}$ dollars.

4th. That in accordance with the provisions of section 2026, he issued one thousand and eight copies of the instructions for the use of supervisors of election, one to each supervisor of election, and for which service he was by law entitled to be paid at the rate of ten cents a folio, but he has only charged ten cents for each copy of instructions, in the aggregate amounting to one hundred and $\frac{80}{100}$ dollars.

5th. That he administered the oath of office to twenty-six supervisors of election, for which service he was entitled by law to be paid ten cents for each oath administered, in the aggregate amounting to two $\frac{60}{100}$ dollars.

4 6th. That between the 5th day of October A. D. 1888, and the 14th day of November A. D. 1888, he was in attendance on the circuit court of the United States for the district of South Carolina, engaged necessarily in the performance of the duties of his office for thirty-four days; and for such services he was entitled to be paid at the rate of five dollars per day, in the aggregate amounting to one hundred and seventy dollars.

7th. That your petitioner resides at Spartanburg, in said State, and it was necessary that he should be present in the circuit court of the United States for the district of South Carolina, at Charleston, in said State, and he actually and necessarily traveled four hundred and forty-six miles in going and returning from his residence to said court, for which he has charged mileage at the rate of five cents per mile, amounting to twenty-two $\frac{30}{100}$ dollars, which is less than the mileage generally allowed by law; and that the sum of sixteen dollars was actually expended by him for railroad fare in going from and returning to Spartanburg from Charleston.

8th. That in the performance of his duty as chief supervisor of elections it became necessary that he should furnish certain printed blanks, and he actually paid to Walker, Evans & Cogswell, stationers and printers, Charleston, So. Ca., for the blanks so furnished the sum of twenty-seven dollars and sixty cents; that among the blanks so furnished were twelve hundred supervisors' oaths, for which four $\frac{75}{100}$ dollars were charged; twenty-five certificates of service, for which one $\frac{50}{100}$ dollars was charged.

5 One hundred applications for supervisors, for which five $\frac{50}{100}$ were charged; and one hundred orders on applications, for supervisors, for which five $\frac{50}{100}$ dollars were charged; and he submits that his said expenditures, amounting to seventeen $\frac{25}{100}$ dollars, were necessarily and properly made by him, and that he is entitled to be reimbursed for the same.

IV. Your petitioner further shews, that on 6th day of December, A. D. 1888, he made out and rendered his account to the United States of America for services rendered and for expenses incurred by him as chief supervisor of elections as aforesaid, including the charges for the services rendered hereinbefore specified, and the said account was duly presented in open court before the circuit court of the United States for the district of South Carolina, and was approved; and a copy of which said account, and the order approving the same, is hereto attached marked Exhibit "A."

V. That the said account was duly presented to the Treasury Department of the United States, and on the 14th day of December, A. D. 1888, your petitioner was notified that the item first above set forth in paragraph III of this petition was suspended, and all of the other items therein set forth were disallowed, and thereafter, on 15th day of January, A. D. 1889, your petitioner was notified that the item theretofore suspended was disallowed, and a copy of the statement of differences issued from the First Comptroller's office is hereto annexed marked Exhibit "B."

VI. Your petitioner further shows that the services hereinbefore specified, the charges for which were disallowed as aforesaid, were nec-
6 essary and *and* proper, and the charges made therefor were authorized by law and payable by the United States, and therefore brings this suit, under the provisions of section 2 of act of Congress of United States, entitled "An act to provide for the bringing of suits against the Government of the United States," approved March 3, 1887.

Wherefore your petitioner prays that judgment be rendered in his favor against the United States of America for the sum of six hundred and forty-nine $\frac{25}{100}$ dollars, together with the costs of this action.

JOHN WINGATE,
Attorney for Petitioner.

THE UNITED STATES OF AMERICA,
District of South Carolina:

Personally appeared before me Samuel T. Poinier, the petitioner, and after being duly sworn says that the matters and things set forth in the foregoing petition are true to his own knowledge.

SAMUEL T. POINIER.

Sworn to before me this 31st day of January, 1889.

JOS. M. ELFORD,
Not. Pub.

7 EXHIBIT A.

United States of America, district of So. Ca. In the United States court.

An account of Samuel T. Poinier, United States chief supervisor of elections for the district of So. Ca., for services rendered and expenses incurred during the Congressional election held on the 6th day of November, 1888, having been presented by Henry A. De Saussure, esq., asst. U. S. attorney, to the court for approval, and it appearing to the satisfaction of the court, by the oath of the chief supervisor on the account, that the services rendered and expenses incurred have been actually and necessarily performed and incurred, as stated, and the charges appearing just and according to law.

It is hereby ordered that the said account, amounting to nine hundred and sixty-three and $\frac{70}{100}$ dollars ($963.70), be, and the same is hereby, approved.

Examined & approved 6 Dec., 1888, for $963.70.

(Signed) CHARLES H. SIMONTON,
U. S. Judge, 6th Dec., 1888.

(Signed) H. A. DE SAUSSURE,
Asst. U. S. Atty.

8 *The United States to Samuel T. Poinier, chief supervisor of elections for district of South Carolina, Dr.*

To filing 105 informations for the appointment of supervisors of elections, at 10c	10.50
" filing 552 returns of election, at 10c	55.20
" " 12 poll-lists, at 10c	1.20
" " 575 oaths of supervisors, at 10c	57.50
" " 24 " deputy U. S. marshals, at 10c	2.40
" " 117 letters or documents, at 10c	11.70
" recording & indexing 105 informations, 2 f. each, at 15c	31.50
" " appointment of 1,008 supervisors, 2 fol. each, at 15c	302.40
" " 552 returns of election, 2 fol. each, at 15c	165.60
" drawing instructions to supervisors, 16 fol., at 15c	2.40
" issuing copies of instructions to 1,008 supervisors, at 10c	100.80
" administering oaths to 26 supervisors, at 10c	2.60
" per diem attend'ce on the U. S. circuit court from Oct. 5 to Nov. 14, 1888, inclusive—34 days—at $5.00 per day	170.00
" mileage, from Spartanburg, S. C., place of residence, to Charleston, S. C., to attend court and return, 446 miles	22.30
" printing blanks, &c., as per accompanying bill	27.60
Total	$963.70

9 CHARLESTON, S. C., *Nov.* 22, 1888.

Mr. Samuel T. Poinier, chief supt. elections, U. S., To Walker, Evans, & Cogswell, Co., stationers and printers, Dr.

'88.		
Oct. 8.	1,200 supervisors oaths	4.75
" 9.	100 notifications of appointments	2.00
" "	100 applications for supervisors	5.50
" "	25 certificates of service	1.50
" "	900 envelopes printed	5.25
" 12.	1 M election returns	2.50
" "	150 orders of applicat. of supervisors	5.50
" 21.	1 index book	.60
		$27.60

Rec'd payment,

WALKER, EVANS & COGSWELL CO.
H. COGSWELL, Jr.

UNITED STATES OF AMERICA,
District of South Carolina:

Personally appeared before me, Samuel T. Poinier, chief supervisor of elections for the district of South Carolina, who, being duly sworn, says that the services charged for as above were actually and necessarily rendered; that the blanks were actually and necessarily used in the discharge of the duties of the office; that the distance charged for as mileage was

actually and necessarily travelled, and that the United States is indebted to him in the sum of nine hundred and sixty-three and $\frac{70}{100}$ dollars, no part of which he has received by discount or otherwise.

(Signed) SAMUEL T. POINIER,
Chief Supervisor of Elections.

Sworn to and subscribed before me, at Charleston, So. Ca., the 23 day of Nov., 1888.

(Signed) J. E. HAGOOD,
C. C. C. U. S. Dist. S. C.

10 United States of America, district of South Carolina, fourth circuit. In the circuit court.

I, J. E. Hagood, clerk of the said court, do hereby certify, that Samuel T. Poinier, chief supervisor of elections has been engaged in the discharge of his duties, from October 5th, 1888, to November the 14th, 1888, inclusive, 34 days, that there was appointed and commissioned by order of the court, 1,008 supervisors of election.

Given under my hand and seal at clerk's office, in city of Charleston, S. C., this 23rd day of Nov., A. D. 1888.

[SEAL.] (Signed) J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

EXHIBIT "B."

First Comptroller's Office, division of judicial accounts.

Form 83.

Account of Samuel T. Poinier, chief supr. of elections for the district of South Carolina, at Congressional election Nov. 6, 1888.

Amount claimed by	$963.70
Am't found due per Treasury statement	314.45
Difference	$649.25

Item No.

Arising as follows:

1. Charges for recording and indexing 105 informations suspended for explanation as to character of informations	31.50
11 2. Recording and indexing appointment of 1,008 supervisors disallowed. This service is performed by the clerk of the circuit court, where supervisors are appointed. It is only for entering and indexing the records of his own office, that the law provides compensation for the chief supervisors	302.40
3. Drawing instructions to supervisors, $2.40, and copies for 1,008 supervisors, $100.80, disallowed. The law requires the chief supervisor to give instructions to supervisors, but does not provide compensation for that service	103.20
4. Administering oaths to supervisors (26) disallowed, as not payable by U. S.; supervisors should pay for same	2.60
5. Per diems for attendance on circuit, $170.00, and travel, $22.30, disallowed; not authorized by law	192.30
6. The following items are disallowed in the bill purchased from Walker, Evans & Cogswell Co.: Blank supervisors' oath, $4.75; these blanks are for convenience of person administering oath, and are covered by the fee for such service. Certificates of service, $1.50, same reason; expense properly borne by person using them. Applications for supervisors, $5.50; orders of applications for supervisors, $5.50. These are not blanks for the use of supervisors to be furnished at the expense of the U. S.	$17.25
Difference as above	649.25

11½ (Indorsed in back:) Entered in docket book, folio 134, March 6th, '89. E. M. Boykin, U. S. marshal. State of So. Carolina, Dist of So. Carolina; in the dist. court of the United States. Samuel T. Poinier, commissioner of circuit court & chief supervisor of elections, district of So. Ca. plaintiff, *vs.* The United States, defendant. Petition under act of Congress March 3d, 1887. Copy. Jno. Wingate, plts. atty. E. M. Boykin, U. S. marshal for the district of South Carolina, being sworn, says, that he served LeRoy F. Youmans, U. S. attorney with a copy of the within summons and complaint personally at Greenville, So. Ca., on the 6th day of February, 1889. (S'g'd.) E. M. Boykin, U. S. Marshal. Sworn to before me, Feb'y 8th, 1889, J. E. Hagood, C. C. C. U. S., dist. S. C.

12 And on the 4th of April, 1889, came into court the defendant, The United States, by its attorney, Le Roy F. Youmans, and filed the following answer, which answer is in the words and tenor following:

Answer.

The U. S. of America, western district of So. Ca., in the district court.

SAMUEL T. POINER, COMMISSIONER OF THE circuit court, and chief supervisor of elections for the district of South Carolina, plaintiff,
vs.
THE UNITED STATES OF AMERICA, DEFENDANT.

Answer to petition.

LeRoy F. Youmans, U. S. attorney for the district of South Carolina, files this answer on the part of the Government of the United States to the petition herein:

I. The copy of petition served on the said United States attorney does not show that the petition has been filed with the clerk of the court having jurisdiction of the case.

II. The copy petition served on the said United States attorney does not show that plaintiff has mailed by registered letter a copy of the petition to the Attorney-General of the United States.

13 III. Strict proof is demanded of each and every of the allegation of the complaint.

IV. The disallowance by the Treasury Department of the said United States of the items of plaintiff's account stated in paragraph V of the petition, and set forth in Exhibit B of the petition, are correct and in accordance with law.

V. No one of the items set forth in the petition constitutes a legal charge in favor of plaintiff against defendant, either for the amount claimed therefor or for any sum whatsoever.

VI. Under authority conferred upon the Attorney-General of the said United States by the President of said United States, the said Attorney-General did, on October 15th, A. D. 1886, with the sanction of the said President, fix five days as the greatest number of days for which supervisors of election could receive compensation for their services, and this action was final and conclusive.

LEROY F. YOUMANS,
U. S. Attorney.

(Indorsed on back:) U. S. of America, west. dist. of So. Ca., in district court. Samuel T. Poinier, plaintiff, vs. The United States of America, defendant. Answer to petition. LeRoy F. Youmans, U. S. att'y. Copy.

14 SAM'L T. POINIER
vs.
THE UNITED STATES.

OFFICE U. S. MARSHAL, DIST. OF SO. CA.,
Greenville, S. C., Feb. 8th, 1889.

JOHN WINGATE, Esqr.,
Att'y at Law, Charleston, S. C.:

DEAR SIR: Yours of 4th instant, inclosing summons & complaint in the above-stated case, came duly to hand, and I served a copy of the same personally upon LeRoy F. Youmans, U. S. att'y, on the 6th inst.; have made affidavit of said service upon the papers, and turned them over to the clerk of U. S. dist. court.

I take it you will have to make the affidavit as to the mailing of a copy by registered letter to the Attorney-General, as required by the act. I would have written sooner, but have only to-day been able to get a copy of the act 3d March, 1887.

Very respectfully, yours,

(Signed) E. M. BOYKIN,
U. S. Marshal.

15 The United States of America, west. district of South Carolina.
In the district court.

SAMUEL T. POINIER
vs.
THE UNITED STATES.

Petition under act of Congress March 3d, 1887.

THE STATE OF SO. CA.,
Greenville County:

John Wingate, being duly sworn, says: That he is the attorney of the petitioner, Samuel T. Poinier; that on the 4th day of February, 1889, he deposited in the post-office at Charleston, So. Ca., a copy of the petition of the petitioner, Samuel T. Poinier, herein, addressed to the Attorney-General of the United States, at Washington, D. C., and registered the same at said post-office, and prepaid the postage thereon.

That thereafter he received the annexed letter from the office of the said Attorney-General of the United States acknowledging receipt thereof.

That on the 5th day of February, 1889, he made an affidavit of said mailing and registering and filed the same in the office of the clerk of said court at Charleston, but on the 19th day of August, 1889, he was informed by the U. S. attorney that said affidavit was not with other papers in said case.

JOHN WINGATE.

Sworn to before me this 20th day of August, 1889.

JAMES Y. HAWTHORNE,
U. S. Com'r.

16 DEPARTMENT OF JUSTICE,
Washington, Feb'y 9, 1889.

JNO. WINGATE, Esqr.,
30 *Broad St., Charleston, S. C.:*

DEAR SIR: I have your letter of February the 4th, inclosing copy of petition of Samuel T. Poinier, U. S. commissioner and chief supervisor of elections.

Respectfully, yours,

ROBERT A. HOWARD,
Assist. Attorney-General.

17 This cause came on to be heard on 23d Aug't, 1889, H. A. DeSaussure, asst. U. S. atty. for U. S., and Jno. Wingate for plaintiff. The foll. testimony was introduced, and after argument the judge reserved his decision.

Testimony following:

18 SAMUEL T. POINIER, sworn, says: I am a commissioner of the circuit court at Spartanburg, S. C., duly appointed and qualified. (Objected to by H. A. DeSaussure, assist. dist. atty., on the ground that commission should be produced. Commission afterwards produced.) I reside at Spartanburg, and hold my office as commissioner of the circuit court there; the distance between Spartanburg and Charleston, S. C., by nearest railway route, is two hundred and twenty-three miles, and the railroad fare there and back is sixteen $\frac{50}{100}$ dollars.

I was appointed chief supervisor of election for the State of So. Ca., and duly qualified. (Objected to by H. A. DeSaussure, assist. dist. atty., on the ground that the commission should be produced. Commission afterwards produced.) I was in attendance on my duties as chief supervisor of elections at Charleston, So. Ca., between the 5th day of October, 1888, and the 14th day of November, 1888, inclusive, a period of 34 days, in Charleston. The circuit court of the United States in Charleston was open each week day between the 5th day of October, 1888, and the 7th day of November, 1888, and I was daily in attendance, and my name recorded as present, and I was present. On the 7th day of Nov., 1888, the court adjourned, but I was obliged to still remain in Charleston, receiving returns from the supervisors, until the 14th day of Nov., 1888, the law of South Carolina prescribing that the returns shall be made by the county board of canvassers within 8 days after the election, and the election having taken place on the 7th day of November, 1888. That election was a general election, and at which delegates or members of Congress
19 and Presidential electors were voted for.

I performed all the services which are charged for in Exhibit "A" to the petition in this case. I recorded and indexed 105 informations, for which I charged two folios each. These were necessary records of my office. The law requires that the supervisors should be one from each political party, and these informations are the records to show the law has been complied with. They show the law has been complied with. They show that the appointments are requested by the properly

constituted ex. committees of the different parties. I produce these 105 informations and the records and indexes thereof. I recorded and indexed 1,008 appointments of supervisors of election, and charged therefor 2 folios each. I produce the records. This record was necessary.

I drew out and forwarded to each of the supervisors of election instructions as to their duties. I drew these instructions because the law requires me to do so. The instructions were 16 folios, for which I charged $2.40, and I had them printed and charged for, each copy ten cents, when the proper charge would be $1.60 each. A copy produced in evidence.

I administered the oath of office to twenty-six supervisors of election and produce the oaths. I am required to furnish forms and papers, and I paid to Walker, Evans & Cogswell, of Charleston, the sum of twenty-seven dollars and sixty cents for the forms and stationary required for the proper conduct of my office. These are all items for blanks and forms which have been usually furnished by the chief supervisor. I have
20 been chief supervisor before my last appointment, and similar charges were always allowed to me before.

(Objected to by H. A. De Saussure, assist. dist. atty.)

Supervisors' oaths are required by the statute to be filed with chief supervisor; unless blanks were furnished they would come in all sorts of shape with omissions in them, and it was necessary that they should be in proper form. The chief supervisor is obliged to give to each supervisor a certificate of his service in order that he may obtain his compensation. These certificates are printed, and they are necessary and proper.

Applications for supervisors are furnished to the executive committees of each party, and blanks have always been furnished by the chief supervisor. The orders for the appointment of the supervisors are prepared by me, and submitted to the court and signed by the judge. They are on printed forms, and these blanks are charged in Walker, Evans & Cogswell's accts. Wherever a blank is charged for, there is no other charge made for service in filling it up or otherwise.

I presented my account in accordance with the law, and it was approved by the district judge, and forwarded by the clerk to the Treasury Department and a duplicate retained in the office of the clerk of the circuit court. I recived a statement of disallowances from the Treasury Department, a copy of which is made Exhibit B to my petition. (Objected to by H. A. De Saussure, assist. dist. atty.) Original produced. (Objected to by H. A. De Saussure, assist. dist. atty., on the ground that the paper was not signed by any officer of the Government.) This statement was
21 enclosed in the following letter:

TREASURY DEPARTMENT,
FIRST COMPTROLLER'S OFFICE,
Washington, Dec. 14th, 1888.

SAM'L T. POINIER, Esq.,
Chief Supervisor of Elections, Spartanburg, So. Ca.:

SIR; The account which you rendered against the United States for $963.70, fees and expenses at the Congressional election held Nov. 6th, 1888, has been examined in this office per report of the First Auditor, No.

111979, and certified for payment in the amount of $314.45. The enclosed copy of the Treasury statement of said account will explain the difference of $649.25 between your figures and the Treasury figures.

Very respectfully,

M. J. DURHAM,
Comptroller.
By J. R. GARRISON,
Dept. Comp.

I afterwards received this letter:

TREASURY DEPARTMENT,
FIRST COMPTROLLER'S OFFICE,
Washington, D. C., Jan. 15, 1898.

SAMUEL T. POINIER,
Chief Supervisor of Elections, Spartanburg, S. C.:

SIR: Your letter of 9th inst. relative to a suspension of $31.50
22 in account No. 111979 has been considered, and the explanation does not seem sufficient to warrant any further allowance. As the recommendations for appointments were on file in your office, or should have been, it does not appear that it was necessary to record them.

Very respectfully,

R. R. W. J. R. GARRISON,
Acting Compt.

Cross examined by H. A. DESAUSSURE, asst. U. S. att'y:

I was in Charleston in necessary attendance on the duties of my office for 34 days between the 5th day of October, 1888, and the 14th d'y of November, 1888. I was in the court-house every day the court was in session. The court was in session every week day from 5th of October, 1888, to 7th November, 1888. After the court adjourned on the 8th of Nov., 1888, I still continued in Charleston because my work was not done. I had to receive the returns from the supervisors, and th'y did not make their returns, some of them, until the votes were counted and returns signed, until the 14th Nov., 1888.

I was in attendance each week day between 8th Nov. and 14th Nov., 1888, in the office of the clerk of the circuit court at Charleston, receiving and recording returns of supervisors. I charge mileage from Spartanburg to Charleston because the clerk of the court is allowed mileage from the place of his residence to the place of holding court, when it is not at his residence, and commissioners are allowed the same fees as clerks for like services. I produce the 105 informations recorded by me. There are 105 of the them. [Counts them.] There are two folios each.

23 I produce record of appointment of supervisors. There were 1,008 supervisors appointed. There was a record of these appointments in the clerk's office; that is, the orders for appointment were recorded there. The clerk's office and my office are distinct. It was necessary that I should record these appointments, because I had to receive the supervisor's reports and returns. I had to have a record to know who the supervisors were, and for what precincts they were appointed.

JAMES E. HAGOOD, sworn.

I am clerk of the circuit court of the United States for the district of South Carolina, and held said office in October and November, 1888. I produce the minutes of the circuit court of the United States for the said district. The order to open court was made by Circuit Judge Bond on 27th Sept., 1888, in pursuance of the act of Congress approved Feb. 28, 1871, for the appointment of supervisors of elections.

The court was opened Oct. 1st, 1888. Samuel T. Poinier was present on 5th Oct. 1888, and his presence noted on the minutes. He was chief supervisor of elections. His presence was recorded on October 6th, 8th, 9th, 10th, 11th, 12th, 13th, 15th, 16th, 17th, 18th, 19th, 20th, 22d, 23d, 24th, 25th, 26th, 27th, 29th, 30th, 31st, Nov. 1st, 2d, 3d, 5th, 6th, 7th, on the 7th the court was adjourned.

I know that the said Samuel T. Poinier remained in my office in Charleston receiving returns and recording them until 14th Nov., 1888, after the court had adjourned. I produce the account of Samuel T. Poinier as chief supervisor of elections filed in my office on 6th December, 1888. My certificate thereto is true and correct. (See Exhibit A to petition.)

24 The United States of America, district of South Carolina, western district.

SAMUEL THANE POINIER
vs.
THE UNITED STATES.

DECREE.

This is an action brought against the United States for services and disbursements as chief supervisor of elections.

Findings of fact.

1. The plaintiff is, and for many years has been, a commissioner of this court, resident in the city of Spartanburg.

2. He was duly appointed chief supervisor of elections within the district of South Carolina.

3. That as such chief supervisor he presented himself before the circuit court of the United States sitting in special term in the city of Charleston, on the 5th day of October, 1888, and regularly attended in person de die in diem the sittings of said court until the 7th day of November, 1888.

4. That the statute law of South Carolina requiring the ballot boxes to be kept sealed until 7 days after the election in charge of managers; that certain of the supervisors were also detailed to watch said boxes, and were not relieved until 14th November, 1888, and that during this last named period the plaintiff, as chief supervisor, remained in Charleston, and daily attended in his room at the court-house for the purpose of discharging the duties of his office.

25 5. That he kept in a book specially adapted for that purpose the record of every transaction, act, or proceeding by him as chief supervisor and every paper connected with his office, which book is on record in this circuit court.

6. That on 6th December, 1888, his account as chief supervisor was duly presented in itemized detail in open court, examined and approved by the district attorney, and approved and passed by the district judge in the sum of $963.70.

7. That the account having been forwarded to the accounting officers of the Treasury Department was examined by them, and the following items therein were disallowed; that is to say:

Recording & indexing appointment of 1,008 supervisors	$302.40
Drawing instructions for supervisors, $2.40, and copies for 1,008 supervisors, $100.80	103.20
Administering oaths to supervisors, 26 at 10 c	2.60
Per diems for attend'ce at court, $170, & travel, 22.30	$192.30
Items on bill of stationery, blank supervisors' oaths, 4.75; certificate of service, 1.50; applications for supervisors, $5.50; order of application for supervisors, $5.50	$17.25
In all	$617.75

8. That the following items were suspended and afterwards disallowed

Recording & indexing 105 informations	$31.50
Making total of disallowances	$649.25

26 9. The plaintiff prepared instructions to supervisors and furnished 1,008 copies to supervisors at polling precincts in So. Ca.

10. He recorded and indexed 105 papers containing information in regard to the appointment of supervisors.

11. He recorded and indexed 1,008 appointments of supervisors of election.

12. To 26 supervisors he administered the oath of office.

13. He caused to be printed and furnished blanks—

For oaths of supervisors, 1,200, and paid	$4.75
For 25 certificates of service on part of supervisors, and paid	1.50
For 100 applications for supervisors, & paid	5.50
For 100 orders on such application, & paid	5.50
In all	$17.25

14. He travelled from his home and official residence to Charleston, where the court was held, 223 miles, and paid actually in fare $16.00.

15. He actually attended in person before the court 28 days, and remained in Charleston as chief supervisor, awaiting the full discharge of their duty by supervisors of election, 6 days; in all, 34 days.

Conclusions of law.

The officer known as chief supervisor of elections is a commissioner detailed as such on specfic duty involving new responsibilities and
27 duties; these, however, do not exclude services as commissioner, on the contrary they include them, and are superinduced on his duties as commissioner. (R. S. of the U. S., sects. 2025 and 2031.) He is required as chief supervisor to prepare certain blanks and other papers, and to perform some other specified duties. (Section 2026.) His compensation the discharge of these duties is fixed by section 2031, but this compensation is apart from and is in addition to the fees allowed by law for any duty performed by him as commissioner. (R. S., sec. 2031; section 847, re

Conrad, 15 Federal Reporter, 641; Gayer vs. U. S., 33 Federal Reporter, 625.) When he performs his specified duties of chief supervisor he gets a compensation provided in the act for these specified duties. When in the discharge of the duties of chief supervisor he performs services analogous to or the same as those of commissioner, for which no specified compensation is provided in the title 26, he must look for his compensation to the statute relating to the fees of the commissioner. It is always to be presumed that when special duties are imposed on an officer of the Government, when such officer is wholly dependent on the fees of his office and has no fixed salary, gratuitous service is not to be implied. (See Gratiot vs. U. S., 15 Peters, 386.) Let us examine the charges that have been disallowed.

First. Recording & indexing the appointments of 1,008 supervisors. It is manifest in order to discharge his duties in connection with supervisors, instructing them from time to time, obtaining information from and of them, that the chief supervisor must have in his office a list of the
28 supervisors who have been appointed, and the evidence of their appointments. Besides this, each supervisor must be put in possession of some certificate of his appointment, and such certificate should be recorded by the chief supervisor and when filed they should be indexed. Each of these papers form two folios. Under section 2031 he gets for entering and indexing every record of his office 15 cents per folio, which is charged here and is allowed.

Second. Drawing instructions to supervisors, 16 folios at 15 cents, $2.40. Copies for 1,008 supervisors, each 16 folios, at 10 cents. The duty of instructing supervisors, responsible and important as it is, is devolved on the chief supervisor. It is not simply a clerical act of the character of those mentioned in sect. 2031, but one more analogous to his duties as commissioner, and more judicial in its character. For like duties as commissioner he is allowed 15 cts. per folio for preparing papers, and 10 cts. per folio for each copy of the paper so prepared. Let him have this allowance.

Third. Administering oaths to supervisors, 26 at 10 cts. each. In the case of U. S. vs. Gayer I allowed a charge like this; upon reexamination I can not find any provision of law which puts upon the Government the cost for swearing supervisors. The supervisors necessarily take an oath, but as they are not compelled to serve, their act is voluntary. The First Comptroller of the Treasury has good reason for not allowing this charge. The expense of taking the oath must be paid by the supervisors themselves. This item is disallowed.

29 Fourth. Per diem for attendance on court. The circuit court was open by order of the circuit judge, under section 2011, on 1st day of October 1888. Section 2026 required the chief supervisor to attend upon the opening of court. He did attend, and day by day discharged his duties as required by law. The provision limiting the pay of supervisors can not apply to him; his duties are entirely distinct from, and in no way resemble, the duties of supervisors. He is not a supervisor. He directs and controls supervisors. Here, then, we have a commissioner of this court appointed chief supervisor and eligible to his office only because he is a commissioner called upon to perform certain duties. The first of these was to attend in person the special term of the circuit court provided for

by statute, and de die in diem present business to that court, and furnish information for its action. This requires his personal presence before the court. No provision is made for his compensation for these duties in section 2031, and no specific provision is made in section 847, but section 847 declares "that issuing any warrant or writ, and for any other service, the commissioner shall receive the same compensation as is allowed to clerks for like service." An ingenious argument was made on behalf of the defendant that the words "for any other service" meant issuing any paper requiring service, this word being used in its narrowest technical sense. But the compensation is for service. The clerk never serves writs and warrants and such like papers. The words must be taken in their natural meaning, and this conveys an idea of the performance of
30 duties similar to those performed by a clerk. Section 828 gives to a clerk for travelling from the office of the clerk where he is required to reside, to the place of holding any court required by law to be held, 5 cents a mile for going and 5 cents a mile for returning and $5.00 a day for attendance on court, while actually in session. The plaintiff was required to keep his office in Spartanburg, when he was delegated as chief supervisor; it became necessary that he should travel from his office in Spartanburg to Charleston where the court was held according to law. Let him have his mileage and per diem.

Fifth. Items of bill of stationery, printed blanks of oaths, $4.75, printed certificate of service, $1.50, blank application for supervisors. Section 2026 directs the chief supervisor to prepare and furnish all necessary books, forms, and instructions. As the number of supervisors is very great, the chief supervisor saves time, trouble, and expense by printing; he should be reimbursed for printing all necessary blanks emanating from his office made necessary for the proper discharge of their duties by supervisors. Among these are the oaths to be taken by the supervisors in order to secure accuracy and uniformity, and for the same reason the form of certificate they must use in order to obtain pay. So also the orders made by the court appointing supervisors should be printed and the disbursements for printing them be allowed to the chief supervisor. The same necessity does not exist for application of supervisors. Section 2026 does not make it his duty to prepare these applications.
31 (See Gayer vs. U. S. supra). The item for these applications is not allowed, $5.50.

Sixth. Recording and indexing 105 informations, two folios each, at 15 cents. Section 2026 requires the chief supervisor to furnish to the court information in respect to supervisors appointed by the court, and also it requires certain information from supervisors of elections themselves. He is also allowed for filing and caring for every return, report, record, document, and other papers, 10 cents. It appears in this case that these informations were papers of a character required by law. It was his duty to file them, and he is entitled to compensation for them. Let this item be allowed. An order will be taken carrying out the conclusions of this opinion.

(Signed) CHARLES H. SIMONTON,
U. S. Judge.

19TH OCT., 1889.

32 The United States of America, western district of South Carolina.
In the district court.

SAMUEL THANE POINIER, COMMISSIONER OF THE circuit court and chief supervisor of elections for the district of South Carolina, plaintiff,
against
THE UNITED STATES, DEFENDANT.

Judgment by the court.

This cause having come on to be heard, at the August term, 1889, of the district court of the United States for the western district of South Carolina, at Greenville, in said district, and having been fully heard on the law and facts before the said court, and the judge of said court having on the 19th day of October, 1889, filed in the said court his findings of fact and conclusions of law thereon, whereby he has decided that the plaintiff, Samuel Thane Poinier, is entitled to judgment against the United States for the sum of six hundred and forty-one $\frac{15}{100}$ dollars, on the items therein specified:

Now, on motion of John Wingate, esquire, attorney for said plaintiff, in accordance with such findings of fact and conclusions of law,
33 it is now

Ordered, adjudged, and decreed:

That the plaintiff, Samuel Thane Poinier, have judgment against the United States for the sum of six hundred and forty-one $\frac{15}{100}$ dollars, and the costs of this action, amounting to thirty-one $\frac{95}{100}$ dollars, aggregating in the whole the sum of six hundred and seventy-three $\frac{10}{100}$ dollars with interest on said sum of six hundred and forty-one $\frac{15}{100}$ dollars at the rate of four per cent. per annum from the date thereof.

Witness the honorable Charles H. Simonton, judge of said court, this twenty-fourth day of October, anno Domini, eighteen hundred and eighty-nine.

(Signed) CHARLES H. SIMONTON,
U. S. Judge.

E. M. SEABROOK,
C. D. C. U. S. for S. C.

34 The United States of America, Western District of South Carolina
in the District Court.

SAMUEL THANE POINIER,
vs.
THE UNITED STATES.

To the Hon'ble Charles H. Simonton, United States District Judge for the District of So. Ca.

Your petitioner, the defendant in the above-entitled cause, The United States, through Abial Lathrop, United States attorney for the district of South Carolina, would respectfully represent and show that in the above-entitled cause, pending in the United States district court

for the western district of So. Ca., there was entered on the 19th day of October, A. D. 1889, a decree to the prejudice and injury of your petitioner, which said decree is erroneous and inequitable in many particulars:

Wherefore, in order that your petitioner may obtain relief in the premises and have an opportunity to show the errors complained of, your petitioner prays that an appeal may be allowed in the said cause to the Supreme Court of the United States.

And your petitioner will ever pray, and so forth.

ABIAL LATHROP,
United States Attorney for Petitioner.

35 United States of America, western district of South Carolina, in the district court.

SAMUEL THANE POINIER
vs.
THE UNITED STATES.

Upon hearing the above petition, and after consideration thereof, it is ordered that the appeal therein prayed for be, and the same is hereby, allowed.

(Signed) CHARLES H. SIMONTON,
U. S. Judge.

19TH MARCH, 1890.

36 THE UNITED STATES OF AMERICA, GREETING:

To Samuel Thane Poinier:

You are hereby notified that in a certain cause in the United States district court for the western district of South Carolina, wherein Samuel Thane Poinier is petitioner and The United States is defendant, the defendant therein has prayed an appeal to the Supreme Court of the United States from the decree in said cause entered, and that such appeal has been allowed; wherefore you are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, commencing on the second Monday of October next, to show cause, if any there be, why the decree appealed from should not be reversed and set aside, and relief be granted to said appel'ant as by him prayed, and as to justice and equity may appertain.

37 Witness the honorable Charles H. Simonton, United States district judge for the district of South Carolina, this 19th day of March, in the year of Our Lord one thousand eight hundred and ninety.

[SEAL.] E. M. SEABROOK,
C. D. C. U. S. Dist. S. C.

38 (Indorsed:) United States of America, western dist. of South Carolina, in the district court, Samuel Thane Poinier vs. The United States. Citation. Filed 20th March, 1890. E. M. Seabrook, C. D. C. U. S. S. C. Service of a copy of the within citation accepted this 20th day of March, 1890. Samuel Thane Poinier. John Wingate, petitioner's attorney.

39 The United States of America, district of South Carolina. In the district court.

SAM'L T. POINIER
vs.
THE UNITED STATES.

Taxation of costs.

Costs of plaintiff's att'y (docket fee)		$20.00
U. S. marshal's costs:		
To entry	.25	
" 2 services	4.00	
		4.25
Clerk's costs:		
Filing petition, 10; answer, 10	.20	
Issuing subpœna, 25; ent. return, 15; filing, 10	.50	
Swearing 2 witnesses in court	.20	
Filing, 10, and ent., 3.00; decree	3.10	
Docket fee	3.00	
Ent., 60, and filing, 10; judgment	.70	
Clerk's costs on appeal:		
Filing and ent. petition and order granting appeal	.25	
Issuing citation; filing	1.10	
To transcribing record (at 15c. per folio):		
Petition (30 fols.), 4.50; answer, 3 fol., 45c	4.95	
Copy of evidence agreed upon (18 f.)	2.70	
Decree (20 f.), 3.00; judgment (4 f.), 60	3.60	
Petition and order for appeal	.45	
Certificate, 15; seal, 20	.35	
		21.10
		45.35

I tax the costs herein at forty-five $\frac{35}{100}$ dollars.

E. M. SEABROOK,
Clerk U. S. Dist. Court for So. Ca.

40 United States of America, district of South Carolina. In the district court.

I, Ephraim M. Seabrook, clerk of the district court of the United States for the district of South Carolina, do hereby certify that the foregoing is a true and correct copy of the records, proceedings, and of the decree in the case of Samuel T. Ponier, plaintiff, against the United States, defendant, rendered as aforesaid, together with all the proceedings had in the cause relating to the same.

Given under my hand and seal of the said court, at clerk's office, in the city of Charleston and district of South Carolina, this the thirty-first day of March, A. D. 1890.

[SEAL.]

E. M. SEABROOK,
C. D. C. U. S. S. C.

(Indorsement on cover:) No. 1151. The United States, appellant, vs. Samuel Thane Poinier, South Carolina D. C. U. S. Filed April 9, 1890.

O

Office Supreme Court U. S.
FILED.
FEB 27 1891
JAMES H. McKENNEY
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

THE UNITED STATES, APPELLANT,
v.
SAMUEL THANE POINIER, APPELLEE. } No. 1151.

SUBJECT: FEES OF CHIEF SUPERVISORS OF ELECTIONS.

APPELLANT'S BRIEF.

JOHN B. COTTON,
Assistant Attorney-General.
JOHN C. CHANEY,
Assistant Attorney.

In the Supreme Court of the United States.

OCTOBER TERM, 1890.

THE UNITED STATES, APPELLANT,
v.
SAMUEL THANE POINIER, APPELLEE. } No. 1151.

APPELLANT'S BRIEF.

The case is appealed from the United States district court for the western district of South Carolina.

Appellee was chief supervisor of elections for the State of South Carolina in 1888.

He rendered the service of such officer, but for certain duties he performed in that behalf it is denied that they were either necessary or legal, and compensation for the same has been withheld for this reason.

His accounts were made up in the usual way—presented to the court in the first instance for approval, then presented to the Treasury Department for payment, where they were disallowed. Next, suit brought upon the same in the

said district court, and judgment awarded appellee for $641.15 upon the whole case, some of the items charged being disallowed by the lower court.

A consideration of the items singly and separately is, doubtless, safest and surest.

Item 1.—Recording and indexing 105 informations.

It can hardly be said that this duty is authorized by section 2026 of the Revised Statutes of the United States.

It is provided that he shall

> *Receive*, *preserve*, and *file* all oaths of supervisors of election, and of all special deputy marshals appointed under the provisions of this title, and all certificates, returns, reports, and records of every kind and nature contemplated or made requisite by the provision hereof, save where otherwise herein specifically directed.

To "receive, preserve, and file," does not mean to *record* same. It simply means that he shall have the custody, and shall take care of the same. Quite a different duty from *recording* such matter.

By that section it is made incumbent upon him simply to *preserve* and *care for* the records and papers appertaining to his office. However, see the *Gayer case* (33 Fed. R., 625).

Section 2031, Revised Statutes United States, allows for—

> Filing and caring for every return, report, record, document, or other paper required to be filed by him under any of the preceding provisions, 10 cents; * * * for entering and indexing records of his office, 15 cents per folio.

He would be entitled probably to a fee of 10 cents for "filing" each of such papers, but they are not papers to be recorded and indexed, neither are they records in themselves for which he would be entitled to so much per folio. However, see the findings and opinion of the lower court thereon.

Item 2.—Recorded and indexed 1,008 appointments of supervisors of election.

The Comptroller has well said: "This service is performed by the clerk of the circuit court."

The entering of such matter on his records are not necessary nor proper.

It is agreed that the chief supervisor should have a list of the supervisors, who have been appointed, for his convenience. But the court appoints and commissions under the hand of the judge and the seal of the court, the supervisors of elections (sec. 2012, Rev. Stat.). The court is required to be kept open until after the election for the transaction of business anent the elective franchise (sec. 2013, Rev. Stat.). What are the records of the court for? Are not the records of the court kept for the purpose of showing the "evidence of their appointments?" And should the clerk and not the chief supervisor record the "certificates of appointments?"

Why is it necessary to record these papers in both places?

However, see the case of *Gayer* vs. *United States* (33 Fed. R., p. 625) which holds that the supervisor is not entitled to fees for filing and indexing, but is entitled to fees for *recording* appointments of supervisors.

Item 3.—Preparation of instructions.

Section 2031, Revised Statutes, does not authorize the payment of the fee charged.

The case of *Muirhead* vs. *United States* (13 C. Cls. R., 251), and same case in 15 C. Cls. R., 116, states that a chief supervisor of elections is not entitled to be paid 15 cents per folio for each copy of instructions which he prepares and furnishes to the supervisors.

And if he is not entitled to the fee for those "furnished" he can not collect a fee for their "preparation." But see *re Conrad* (15 Fed. R., p. 641).

Item 4.—"Furnishing copies" is included in the reasoning adduced for item 3, and can not be allowed. See again the *case of Muirhead*; but also see *McDermott* (40 Fed. R., p. 218.)

Item 5.—Administering oath to supervisors.

This is not warranted by the statute, and in the *case of Muirhead* (13 C. Cls. R., *supra*) "The chief supervisor of elections has no power to administer oaths."

It is doubtful if he can administer such oath as commissioner even under the holding in United States *vs.* Reily, 131 U. S. 58.

However, see the case of Gayer, *supra*, *contra*. But the lower court in the case at bar takes back what was held in regard to this matter in the Gayer case. The *supervisors* should bear such expense themselves.

Item 5.—Per diems for attendance on the court and mileage. It is respectfully submitted that the fees mentioned in section 2031, to be paid to the chief supervisor of elections, "apart from and in excess of all fees allowed by law

for the performance of any duty as circuit court commissioner" are the *only* fees allowed him as such chief supervisor, and that that section does not provide for per diems.

The reason is manifest.

A chief supervisor is not appointed for a day, a week, or a month, but "shall, so long as faithful and capable, discharge the duties" (Sec. 2025).

Supervisors, by section 2031, are allowed $5 per day for ten days, but not the *chief* supervisor.

That section is clear and explicit. It provides certain compensation for a *chief* supervisor in addition to his pay as a circuit court commissioner. It also provides for the compensation of a *supervisor* and it provides for deputy marshals.

The distinctions are marked; and, there being no ambiguity, there can be no doubt of the fact that no per diem is allowed the *chief* supervisor by section 2031.

The duties of a *chief* supervisor can not be performed in *ten days*.

The time of the *chief* supervisor is not limited.

All that is needed to convince any one that *per diems* are not allowed chief supervisors, is to read sections 2025 and 2031 together, and as relating to *chief* supervisors.

Section 2031 provides the compensation for all services rendered by the chief supervisor, in addition to his duties as commissioner, and the duties which he performs in this behalf are as follows: Filing and caring for every return, report, record, document, or other paper required to be filed; affixing a seal to any paper, record, report, or instrument; entering and indexing records of his office, arrang-

ing and transmitting to Congress as provided for in section 2020 any report, statement, record, return or examination, and also any copy of a paper on file in his office.

He performs no other duties than those named above and for each and all the above duties, provision is made in said section 2031 for compensation.

See decision of the First Comptroller of August 1, 1883 (4 Lawrence, p. 442) and *Case of McDermott* (40 Fed. R., p. 218).

But see *Gayer* v. *United States* (33 Fed. R., p. 625) also *Case of Poinier* (40 Fed. R., p. 189) *contra*.

It is certainly a straining of sections 2012 and 2026 to say that they require the *attendance* of the chief supervisor each day of the court, opened for the purposes of the franchise, or that such *attendance* is made necessary by the provisions of those sections.

If the position here taken, that "attendance" upon the court is unnecessary and unauthorized, the charge for mileage to reach the court for such "attendance" can not be allowed.

The court below holds that this service is authorized and provided for in section 847 in its reference to section 828, and, by elaboration, binds the Government to pay the mileage and per diem in this item charged.

The effort to trace this back to the allowance made to the clerk in section 828, though somewhat a labored one, is not without a show of reason, *i. e.*, in the manner in which it is put by the lower court; but it is certainly without *substantial* reason.

Item 7.—Printed blanks, etc.

The proper estimation, doubtless, is placed upon this item by the Comptroller and the lower court, and no further comments thereon are now deemed necessary.

JOHN B. COTTON,
Assistant Attorney-General.
JOHN C. CHANEY,
Assistant Attorney.

FEBRUARY 14, 1891.

O

Office Supreme Court U. S.
FILED,
MAR 5 1891
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 1151.

THE UNITED STATES, APPELLANT,

vs.

SAMUEL T. POINIER, APPELLEE.

Brief of Appellee in Reply to Brief of Appellant.

JOHN WINGATE,
CHARLES C. LANCASTER,
Counsel for Appellee.

MITCHELL, PRINT.

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 1151.

THE UNITED STATES, APPELLANT,

vs.

SAMUEL T. POINIER, APPELLEE.

Appeal from the District Court of the United States for the District of South Carolina.

Brief of Appellee in Reply to Brief of Appellant.

This reply is deemed necessary for the information of the Court, in order that unintentional errors in appellant's brief may be corrected.

The order of argument on the various items in controversy follows the action of the accounting officers of the Treasury Department on page 5 of the record.

Item 1. R., pp. 4 and 5. Recording and indexing 105 informations.

The Attorney General in his brief, page 2, says: "It can hardly be said that this duty is authorized by section 2026 of the Revised Statutes of the United States. To 'receive, preserve and file,' does not mean to record the same."

On page 3 he says: "He would be entitled probably to a fee of 10 cents for 'filing' each of such papers."

Now the fact is that the appellee has been allowed 10 cents for filing these informations by the accounting officers of the Treasury, as will be seen on page 4 of the record.

Section 2026, R. S., requires the chief supervisor to receive, preserve, and file the "records of every kind and nature contemplated or made requisite by the provisions hereof," for which he is paid 10 cents by section 2031, R. S., for each record filed.

It being conceded by the accounting officers and the Attorney General that for filing these informations the appellee was entitled to 10 cents each, it follows, as a legal conclusion, that they are *records* of the chief supervisor's office, and being "records of his office" he is clearly entitled by section 2031, R. S., to 15 cents per folio for entering and indexing said records.

This charge was allowed in the Dennison case, 25 C't Cl's, 306.

Item 2. R., pp. 4 and 5. Recording and indexing appointment of 1,008 supervisors.

The Attorney General in his brief, page 3, adopts the views of the First Comptroller that "this service is performed by the clerk of the circuit court." But neither have cited any authority to sustain them in this forced construction of the statute.

On the contrary, the law nowhere gives the clerk of court the power to file or record the appointments or commissions of supervisors of election.

Section 2012, R. S., requires the court, when opened by the judge, to appoint and commission from day to day, under the hand of the judge and the seal of the court, the supervisors of elections.

But how is the court to act without a knowledge of the facts, and what officer under the law is required to furnish the facts? Not the clerk of the court but the chief supervisor.

Section 2026, R. S., requires the chief supervisor upon the opening of the court to present the applications for appointment to the judge and furnish information to him in respect to the appointment of the supervisors of election. The judge

and the chief supervisor are the only two officers under the provisions of title XXVI, the Elective Franchise, that have anything to do with the appointment and commissioning of supervisors of election. When the appointments and commissions are made out by the judge what officer under the law has the custody of these papers? Not the clerk, because they are not filed in the clerk's office.

The clerk may enter any orders pertaining to appointments, but not the appointments or commissions themselves.

Section 2026, R. S., requires the chief supervisor to "receive, preserve, and file all oaths of office of supervisors of election, * * * and all cetificates, returns, reports, and *records* of every kind and nature contemplated or made requisite by the provisions hereof." And these appointments and commissions are some of the records "contemplated and made requisite by the provisions hereof," which the chief supervisor is required to receive, preserve, and file. It might as well be said that it was the duty of the clerk to record the oaths of office when the law makes them the records of the chief supervisor's office. Being records of his office, he is entitled to 15 cents per folio for entering and indexing the same under section 2031, R. S.

This charge was allowed in the Dennison case, 25 C't Cl's, 307.

Items 3 and 4. R., pp. 4, 5. Drawing instructions to supervisors and copies for 1,008 supervisors.

The Attorney General in his brief, page 4, says: "Section 2031, Revised Statutes, does not authorize the payment of the fee charged." Neither does it authorize the payment of all necessary books, forms and blanks required to be furnished the supervisors of election by the chief supervisor under section 2026, R. S. Yet they are allowed by the accounting officers in this case, R., pp. 4, 5, and have been allowed since the passage of the act in 1871.

Section 2026, R. S., necessarily leaves it to the discretion of the chief supervisor as to how he shall prepare and furnish the instructions to the supervisors. Having adopted the

method in controversy and incurred the expense, which was approved by the U. S. circuit court as actually and necessarily incurred, the intendment is clear that the Government would reimburse the supervisor for all such necessary expenditures. It was not intended that the officer should furnish such instructions at his own expense.

Walker *vs.* U. S., 41 Fed. Rep., 675.

This charge was allowed in Dennison's case, 25 C't Cl's, 306.

Item 5. R., pp. 4 and 5. The Attorney General in his brief, page 6, says: "The court below holds that this service is authorized and provided for in section 847 in its reference to section 828, and, by elaboration, binds the Government to pay the mileage and per diem in this item charged.

"The effort to trace this back to the allowance made to the clerk in section 828, though somewhat a labored one, is not without a show of reason, *i. e.*, in the manner in which it is put by the lower court, but it is certainly without substantial reason."

A careful examination of the authorities will clearly show that this view of the question *is* based on substantial reason. In the Wallace case, 20 C't Cl's, 273, the question was, is a commissioner entitled to docket fees? It was contended on behalf of the claimant that section 847, R. S., regulating the the fees of commissioners, provided "for issuing any warrant or writ, or for any other service, the same compensation as is allowed to clerks for like service." Clerks were allowed by the 10th, 11th, and 12th paragraphs of section 828, R. S., "for making dockets and indexes, &c., $3.00, $2.00 and $1.00 in each case. The Court of Claims concurred in this construction of the statute, and on appeal to this Court the views of the lower court were sustained.

U. S. *vs.* Wallace, 116 U. S., 398.

In re Rand, 18 Fed. Rep., 99.

The claimant is both commissioner and chief supervisor, and where he performs services as chief supervisor for which

payment is not specially provided for in section 2031, R. S., he must be paid under the provisions of sections 847 and 828, R. S., on the authority of the above decisions.

Paragraph 18 of section 828, R. S., provides for the mileage of the clerk going from his residence to the place of holding court, and for his attendance on the court. The chief supervisor and commissioner also travels from his residence to the place of holding court for the appointment of supervisors of election, and is in attendance on the court.

Section 2026, R. S., requires his attendance on the opening of the court, for it provides that "he shall *present* such applications to the judge thereof, and furnish information to him in respect to the appointment by the court of such supervisors of election."

It is therefore made apparent that the reasoning of the court below is not "a labored one," but is the correct legal construction to place on the statutes applicable to the case at bar.

We cannot presume that the law-creating power, at pleasure, would impose imperative duties on an officer and at the same time avoid payment on the ground there was no provision for the payment of such services. Attorney General Cushing, construing the act of February 26, 1853, section 823, R. S., held that it did not prohibit compensation to an officer not specified in the act. 6 Op., Att'y Gen'l, 59.

In 1859 Judges Nelson and Betts of the circuit and district courts for the southern district of New York made rules of court allowing fees to commissioners in case of references, which were not provided for in the act of 1853.

4 Blatchford, appendix 515.

In *ex parte* Jaffrey (1869) Judge Lowell allowed counsel fees not provided for in the act. 1 Lowell, 321.

It is not reasonable that the service should be performed without compensation. As it is for the benefit of the United States, it is reasonable that the United States should pay for it. 14 Blatchford, 225.

The conclusion might be different if the officer were compensated in part by a salary, but such is not the case here.

In re Conrad 15 Fed. Rep., 643.

Where the words of a statute prescribing compensation to a public officer admit of two interpretations, they should be construed in favor of the officer.

Moore *vs.* U. S., 4 C't Cl's, 141.

U. S. *vs.* Moose, 3 Story, 87.

EFFECT OF NON-PAYMENT.

If services of the character sued for in this case are not paid for, no chief supervisor can afford to properly enforce the law. The refusal to pay for such services of late has already caused the chief supervisor of some of our largest cities to refrain from active operations, and doubtless others have been deterred in like manner. The disallowance of the fees for such services will be as effectual in its evil results as the repeal of the law. (Testimony of Chief Supervisor John J. Allen of the Eastern District of New York in the Dennison case, 25 C't Cl's.)

UNIFORMITY AND IMPORTANCE OF THE SERVICES.

The services performed by the appellee and embraced in this suit are similar to those performed by other chief supervisors, and the uniformity of the services proves that the work is necessary to properly enforce one of the most important laws on the statute book. Said services are required by the United States for its own protection. They affect the very foundation of the General Government, and when discharged in good faith, and in the exercise of that broad official discretion so wisely contemplated by the law-making power, should be approved by every patriotic citizen and liberally sustained by the courts.

Apart from the arguments above, it is insisted that this appeal should be dismissed on the authority of the Jones case, decided by this Court in 134 U. S., 483, where it is held

that "the approval of a commissioner's account by a circuit court of the United States, under the act of February 22, 1875, is *prima facie* evidence of the correctness of the items of that account; and in the absence of clear and unequivocal proof of mistake on the part of the court it should be conclusive."

The account in suit was approved by the circuit court as required by the act of February 22, 1875, and the appellant has offered no clear and unequivocal proof that the circuit court made any mistake in the approval of said account.

CHARLES C. LANCASTER,
Counsel for Appellee.

Office Supreme Court U. S.
FILED,
MAR 9 1891
JAMES H. McKENNEY,
CLERK.

SUPREME COURT of the UNITED STATES

October Term, 1890.

No. 1151.

THE UNITED STATES, APPELLANT,

vs.

SAMUEL THANE POINIER, APPELLEE.

BRIEF OF ARGUMENT FOR APPELLEE.

JOHN WINGATE,
Attorney for Appellee.
CHARLES C. LANCASTER,
of Counsel.

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

October Term, 1890. No. 1,151.

THE UNITED STATES, Appellant,

vs.

SAMUEL THANE POINIER, Appellee.

Appeal from the District Court of the United States for the District of South Carolina.

BRIEF OF ARGUMENT ON BEHALF OF APPELLEE.

Samuel Thane Poinier is, and was at the time of the commencement of the action, and at the time of the performance of the services therein specified and charged for, a commissioner of the circuit court, and chief supervisor of elections of the District of South Carolina. 1

Under the provisions of Section 2,031 R. S. United States, his account for services for the Congressional election of 1888 was "made out, verified, examined and certified as in the case of accounts of commissioners," the examination and certificate required being made by the Hon. Charles H. Simonton, judge of the District Court of the United States on the 6th of December, 1888. 2

The officers of the Treasury Department disallowed the greater part of the charges so "made out, verified, examined and certified;" and thereafter, the said Samuel Thane Poinier, as commissioner of the circuit court and chief supervisor of elections for said District of South Carolina, commenced his action in the District Court of the United States for the Western District of South Carolina for the fees so disallowed under the 2nd Section of the Act of Con-

3 gress, entitled "An Act to provide for the bringing of suit against the Government of the United States," approved March 3, 1887, and recovered judgment against the United States for six hundred and forty-one and fifteen-one-hundredths dollars; and under the provisions of said act, the United States within six months after the rendition of said judgment has appealed to this court from the judgment aforesaid.

Under the existing law the only Federal supervision in elections for representatives for Congress, is provided for
4 in Sections 2,011 to 2,031 of the Revised Statutes of the United States.

Section 2,011 R. S. Provides for the opening of the Circuit Court of the United States not less than ten days prior to any registration of voters or election, in case two persons in cities of over 20,000 inhabitants or ten citizens in any county or parish make application to have the registration or election guarded and scrutinized.

Section 2,012. Provides for the appointment and commissioning by the judge from day to day and from time to
5 time two citizens, residents of each voting precinct, "who shall be of different political parties, and able to read and write the English language, and who shall be known and designated as supervisors of election," and gives power to revoke, change or renew such appointments.

Section 2,013. Requires the court to be kept opened from the time it is opened as provided in Section 2,011, until day following the day of election.

Section 2,014. Provides that the district judge may perform the duties of the circuit judge.

6 Section 2,015. Construes the preceding section.

Section 2,016. Prescribes the duties of supervisors of election at registration of voters.

Section 2,017, 2,018, 2,019, 2,020. Prescribes the duties of supervisors of election at elections, their position at the

polls, and their reports of the election, and in case they are molested.

Section 2,021. Provides for the appointment of special deputies of the marshal.

Section 2,022. Provides the duties of the marshal, and his general and special deputies, at registrations and elections. 7

Section 2,023. Provides for the immediate examination of persons arrested without issuance of a warrant.

Section 2,024. Provides that the marshal and his general and special deputies, in case of forcible resistance, may call on the by-standers for assistance.

Section 2025. Provides for the appointment by the circuit court, "from among the circuit court commissioners for each judicial district, one of such officers who shall be known for the duties required of him under this title as the chief superior of elections." 8

Section 2026. Provides, "The chief supervisor shall prepare and furnish all necessary books, forms, blanks and instructions for the use and direction of the supervisors of election in the several cities and towns of their respective districts; he shall receive the applications of all parties for appointment to such positions; upon the opening, as contemplated in section two thousand and twelve of the circuit court for the judicial district in which the commissioner so designated acts, he shall present such applications to the judge thereof, and furnish information to him in respect to 9 the appointment by the court of such supervisors of election; he shall require of the supervisors of election, when necessary, lists of the persons who may be registered and vote, or either, in their respective election districts or voting precincts, and cause the names of those upon any such list, whose right to register or vote is honestly doubted, to be verified by proper enquiry and examination at the respective places by them assigned as their residences; and he shall receive, preserve and file all oaths of office of supervisors of election, and of all special deputy marshals appointed under the provisions of this title, and all certificates, 10

returns, reports and records of every kind and nature contemplated or made requisite by the provisions hereof, save where otherwise herein specially directed."

Section 2027. Provides that marshals and commissioners shall forward complaint, etc., to the chief supervisor of election.

Section 2028. Provides for the qualification of supervisors and deputies marshal appointed under this title.

11 Section 2029. Provides that certain supervisors shall not make arrest without warrant.

Section 2030. Restricts the appointment of marshals and deputy marshals.

Section 2031. Provides, "There shall be allowed and paid to the chief supervisor for his services as such officer, the following compensation, apart from and in excess of all fees allowed by law for the performance of any duty as circuit court commissioner: For filing and caring for every return, report, record, document or other paper required to
12 be filed by him under any of the preceding sections, ten cents; for affixing a seal to any paper, record, report or instrument, twenty cents; for entering and indexing the records of his office, fifteen cents per folio; and for arranging and transmitting to Congress as provided for in section two thousand and twenty, any report, statement, record, return, or examination, for each folio, fifteen cents; and for any copy thereof or of any paper on file a like sum. * * * And the fees of the chief supervisor shall be paid at the Treasury of the United States, such accounts to be made out, verified, examined and certified as in case of accounts to be
13 made out, verified, examined and certified as in the case of accounts of commissions, save that the examination or certificate may be made by either the circuit or district judge."

I have prepared the foregoing statement of the Federal election laws, in a condensed form, for the purpose of showing that the duties of chief supervisor of election, commence with the opening of the circuit court under the provisions of title XXVI. of Revised Statutes U. S., and continue not only during the prescribed session thereof, but also until all the certificates, returns, reports and records of

every kind and nature contemplated or made requisite by 14
the provisions of said title are received, recorded and filed; and also require him to communicate with every Federal officer who has any duty to perform in connection with the election laws.

I.

The first charge allowed by the district court in judgment appealed from, is the charge of the appellee, for recording and indexing one thousand and eight appointments of supervisors of election, two folios each, three hundred and two 40-100 dollars. 15

In disallowing this charge the comptroller-general says: "This service is performed by the clerk of the circuit court where supervisors are appointed. It is only for entering and indexing the records of his own office that the law provides compensation for chief supervisors."

The comptroller-general errs in his statement of fact. The service was performed by the chief supervisor. The judge so finds, with the evidence before him; and the only question is, was the service proper and necessary?

While it is true that the law requires the judge of the 16
circuit court to appoint and commission under the hand of the judge and under the seal of the court * * * supervisors of election "for each election precinct: (section 2012); still it is the duty of the chief supervisor "to prepare and *furnish* all necessary books, blanks, and instructions for the use and direction of the supervisors of election;" to require them if necessary to perform certain duties; and "to receive, preserve and file all oaths of office of supervisors of election, and of all special deputy marshals appointed under the provisions of this title, and all certificates, returns, re- 17
ports and records of every kind and nature contemplated or made requisite by the provisions hereof, save where otherwise herein specially directed." (Sec. 2026.)

It is difficult to understand how this duty could be performed if the chief supervisor had no record in his office; of who the supervisors were, and for what precincts they had been appointed; with the date of their appointment,

commission and qualification; as well as when instructions were forwarded to them. Such a record is manifestly necessary and proper, and prompt reference requires that the index thereto should be complete and perfect.

Section 2031. Provides that the chief supervisor shall receive "for entering and indexing the records of his office."

The difference between the duties of the clerk of the circuit court and those of the chief supervisor are set forth in U. S. vs. Gayer, 33 Fed. Rep. 628, where Simonton, district judge, says: "Filing 54 orders for appointment of supervisors and indexing the same; recording the same. These orders belong to the court, are of its record, must be filed in court, and not with the chief supervisor. But he should have among the records of his office the names of all the supervisors whom he must overlook, who are subject to removal, and in whose list vacancies may arise. He should enter and index such lists among the records of his office, and for this he is allowed 15 cents per folio, by section 2031. That decision was filed January 12, 1888, and not appealed from. It therefore became equivalent to a positive order of the court, that the defendant in error should perform the services for which he charges in this item.

As to this charge the judge in the decision appealed from says: "First, recording and indexing the appointments of 1008 supervisors. It is manifest, in order to discharge his duties in connection with supervisors, instructing them from time to time, obtaining information from and of them, that the chief supervisor must have in his office a list of the supervisors who have been appointed, and the evidence of their appointments. Besides this, each supervisor must be put in possession of some certificate of his appointment, and such certificate should be recorded by the chief supervisor, and when filed they should be indexed. Each of these papers from two folios. Under section 2031 he gets for entering and indexing every record of his office 15 cents per folio, which is charged here and is allowed."

I contend that there is no error in this part of the decree.

II.

The second charge allowed by the district court in judgment appealed from, is the charge of the appellee for drawing instructions for supervisors $2.40 and copies for 1008 supervisors $100.80—one hundred and three 20-100 dollars. 22

In disallowing this charge, the comptroller-general says: "The law requires the chief supervisor to give instructions to supervisors, but does not provide compensation for that service."

The law requires him to prepare and furnish instructions to supervisors. These instructions properly include not only a synopsis of the Federal law, but also of the State law in relation to the qualification of electors; and it may be said in passing that the law of South Carolina is very complicated, and requires much explanation. And the instructions which have been prepared have been repeatedly before the courts for revision and correction. 23

It is clear that the instructions which are prepared by him are a proper record of his office, and that he should be allowed 15 cents a folio for them; and for copies of the same, he should be allowed at the rate of ten cents per folio.

Section 2031. Prescribes certain fees, for certain specified services, which are allowed to the chief supervisor, "apart from and in excess of all fees allowed by law for the performance of any duty as circuit court commissioner." 24

It is to be remembered that the chief supervisor is to be appointed from among the circuit court commissioners of the district for which he is appointed. Sec. 2,025. He is therefore chief supervisor because he is a commissioner of the circuit court.

His fees as commissioner are prescribed by section 847, R. S., and when he performs other services not provided for in that section, he is allowed the same compensation as is allowed to clerks for like services under section 828, R. S.

For such services clerks would be allowed compensation as at fifteen cents per folio for the original and ten cents per folio for the copy. 25

In the case *Ex Parte Conrad*, 15 Fed. Rep. 641, Judge Bradford says: "When the chief supervisor is required by a statute to do or perform any service, the payment of which is not provided by section 2031 aforesaid, he may lawfully claim payment for the performance of said services under sections 828 or 847, Rev. St., if the service comes within the scope of those acts. This is plainly so, because otherwise,
26 it would assume that congress, having created an office of dual capacity and individuality, and having provided a somewhat complicated fee tariff for his compensation in either capacity, might at pleasure impose imperative duties on him in one capacity, and at the same time avoid payment on the ground that there was no provision for the payment of such services when performed in such capacity. In other words, by a mere quibble, escape from payment of just charges for the performance of the services imposed upon him. We cannot assume that this was the intention of the law-creating power. Every reasonable presumption points to the
27 contrary. Where an act is required to be performed or services to be rendered, and the officer required to pertorm it necessarily holds two positions intimately and indispensably connected, and provision is made by law for the payment of services rendered in each capacity, it is more consonant with the principles of justice and equity that compensation for that service should be made according to the provisions of the statute that applies to it, rather than to deny such remuneration on mere technical grounds, and to require the
28 gratuitous performance of the service by the officer."

Such fees as those charged for, were allowed in the cases Gayer vs. U. S., 33 Fed. Rep. 223.; McDermott vs. U. S., 40 Fed. Rep. 223.; Walker vs. U. S., 41 Fed. Rep. 6-2.

In the case of McDermott vs. U. S., *supra*, in reference to similar charge, it is said: "Since this case was submitted to the court, plaintiff has furnished an additional brief, showing recent rulings by the accounting officers of the treasury, made with the approval of the attorney-general, under which instructions are paid for at the rate claimed
29 here."

The judge in the decision appealed from says: "Second drawing instructions to supervisors, 16 folios at 15 cents, $2.40. Copies for 1008 supervisors, each 16 folios at 10 cents. The duty of instructing supervisors, responsible and important as it is, is devolved on the chief supervisor. It is not simply a clerical act of the character of those mentioned in section 2,031, but one more analagous to his duties as commissioner, and more judicial in its character. For like duties as commissioner he is allowed 15 cents per folio for preparing papers, and 10 cents per folio for each copy of the 30
paper so prepared. Let him have this allowance."

III.

The next charge allowed by the district court in the judgment appealed from is for compensation for attendance upon the circuit court by the appellee in performance of his duties as chief supervisor of election from October 5th to November 14, 1888, at the rate of $5.00 per day, one hundred and seventy dollars, and mileage, from Spartanburg, S. C., place of residence, to Charleston, S. C., to attend court and return, 446 miles, at five cents per mile, twenty-two and 31
thirty-one-hundredths dollars.

In disallowing this charge the Comptroller General says, "not authorized by law."

The fact of the service is undisputed, and the sole question is, can per diem and mileage be charged?

All that I have said in reference to the second point could well be repeated in reference to this charge.

Section 2,026 directs that the chief supervisor shall receive the application of all parties for appointment to the position of supervisiors of election, "upon the opening, as contem- 32
plated in section two thousand and twelve, of the circuit court for the judicial circuit in which the commissioner so designated acts, he shall present such applications to the judge thereof and furnish information to him in respect to the appointment by the court of such supervisors of election."

The circuit court is required to be opened not less than ten days before the election (section 2,011), and when

opened is required to be kept always open, up to and including the day following the election, for the transaction of
33 business under said title (section 2,013).

As I have already stated, the chief supervisor must be a commissioner of the circuit court (section 2,025), and he is allowed the fees specified in section 2,031, in addition to fees allowed him as commissioner.

Under section 847 a commissioner of the circuit court is allowed fees of five dollars per day for hearing and deciding criminal cases and similar per diem in application for the discharge of poor convicts, but the greater part of the
34 charges of commissioners are allowed them under the words, "and for any other service the same compensation as is allowed to clerks for like services."

Section 828 provides "for traveling from the office of the clerk, where he is required to reside, to the place of holding any court required by law to be held, five cents a mile for going and five cents for returning, and five dollars a day for his attendance on the court while actually in session."

Section 627. "Each circuit court may appoint in different parts of the district for which it is held, so many discreet persons as it may deem necessary, who shall be called
35 "commissioners of the circuit courts," and shall exercise the powers which are or may be expressly conferred by law upon commissioners of circuit courts."

The appellee was a commissioner of the circuit court residing at Spartanburg, and appointed for that part of the district, and the court being held in Charleston, he necessarily performed the travel for which he has charged from the place where his office is, and where he is required to reside, to the place where the court is required by law to be held.

36 Supervisors of election and special deputies of the marshal are allowed compensation at the rate of five dollars for each day he is actually on duty not exceeding ten days.

I submit that it would be a strained construction of the law which would deprive the chief supervisor of compensation at the same rate of five dollars per day, when it is provided that the fees allowed in section 2,031, are to be

apart from and in access of all fees allowed by law for the performance of any duty as circuit court commissioner.

In the case *In re* Conrad, 15 Fed. Rep., 641, fees were allowed to the chief supervisor for ten days' service. The 37
claim was for fourteen days' service. The judgment reduced the claim to ten days at five dollars a day, and approved it for that amount. The judge says, "The duties pertaining to the office of chief supervisor are very responsible and onerous, and involve a judgment and discrimination beyond mediocrity. The person selected and fitted for such an office is entitled to the fees which properly come within the tariff of compensation provided for the office of commissioner and supervisor."

In the case of the U. S. vs. Gayer, 33 Fed. Rep. 625, in 38
reference to the precise question, Judge Simonton, after stating that the chief supervisor was not restricted to compensation for ten days, says: "As we have seen, the chief supervisor is a commissioner appointed because he is a commissioner. His compensation as chief supervisor is not exclusive of, but in excess of and apart from, his fees as commissioner. Section 2031. Can it be that the government would require a commissioner to give of his time, and not compensate him? As he would be entitled as commissioner, when engaged in his official duties for services analogous 39
to these, to a per diem of five dollars, he is allowed the same here.

In the case of Gratiot vs. The United States, 15 Peters, 336, at page 370, Mr. Justice Story says: "It is not sufficient to establish that these items ought to be rejected, that there is no positive law which expressly provides for or fixes such allowances. There are many authorities conferred on the different departments of the government which for their due execution require services and duties to be performed which are not strictly appertaining to or devolved upon any 40
particular officers, or which require agencies of a special discretionary nature. In such cases the department charged with the execution of the particular authority, business or duty, has always been deemed incidentally to possess the right to employ the proper persons to perform the same,

and to appropriate means to carry into effect the required end; and also the right when the service or duty is an extra service or duty, to allow the person so employed a suitable compensation."

41 While I contend that section 2031 is a positive law, which allows to the chief supervisor his charges for per diem and mileage; and that any other construction of this statute is a strained construction against the principles of justice and equity; I also submit that the above case is authority for a liberal construction of the statute in favor of the allowance of a suitable compensation to the officer, who, by being continuously employed in the performance of a duty, which deprives him of the ability to earn the compensensation allowed him as a commissioner of the circuit court, would
42 otherwise be deprived of suitable compensation.

I am aware that the contrary is ruled in the case of McDermott vs. United States, 40 Fed. Rep., 217, but that case does not consider that portion of section 847 which allows to commissioners of the circuit court "for any other service, the same compensation as is allowed to clerks for like services," and the positive provision heretofore referred to which allows to clerks fees for per diem and mileage, section 828. Besides, it is inconsistent with the other part of the same decision which allows compensation to the chief supervisor
43 for preparing and furnishing instructions to supervisors, which can only be allowed under the same provisions of sections 847 and 828, R. S.

That part of the decision of the court now appealed from which allows per diem and mileage to the appellee, I contend is not only in consonance with the principles of justice and equity, but is also sustained by the proper construction of the positive law, and should be affirmed.

IV.

The next charge allowed by the district court is a charge
44 for disbursement by the appellee for printing blanks, amounting in the aggregate to eleven 75-100 dollars. These blanks were, 1st, oaths to be taken by supervisors, and they were printed "in order to secure accuracy and uniformity;"

2nd, certificates of service of supervisors, rendered necessary in order that the supervisors should obtain the compensation allowed to them; 3d, the formal part of orders of the court appointing supervisors. It is manifest that these blanks were necessary for the proper discharge of the duties of the office of chief supervisor, and under section 2026 he is required to prepare and furnish them. 45

Under the principles already announced I submit that the chief supervisor is entitled to be reimbursed for these necessary disbursements.

V.

The last charge allowed by the district court is the charge of the chief supervisor for recording and indexing 105 informations, two folios each, at 15 cents per folio, $31.50.

This charge was suspended by the comptroller-general for explanation as to the character of the informations, and 46 after explanation, was disallowed in these words, "the explanation does not seem sufficient to warrant any further allowance. As the recommendations for appointments were on file in your office, or should have been, it does not appear that it was necessary to record them."

The testimony shows the nature of these informations as follows: The law requires that the supervisor should be one from each political party, and these informations are the records to show the law has been complied with. They show that the appointments are requested by the properly 47 constituted executive committees of the different parties."

The qualifications of supervisors of election are prescribed by section 2,012, R. S., "Two citizens residents of the * * * voting precincts * * * who shall be of different political parties, and able to read and write the English language." And section 2,020 requires them to be qualified voters of such precinct.

Section 2026 requires the chief supervisor to present the applications of supervisors to the judge, "and furnish information to him in respect to the appointment by the 48 court of such supervisors of election."

Therefore it can scarcely be seriously contended that these informations which are the proof that the law has been complied with, are not proper and necessary records for which he is allowed by section 2,031, a fee of fifteen cents per folio for entering and indexing.

The decision of the court is that "these informations were papers of a character required by law," and that this item be allowed, and I submit that this decision should be affirmed.

C. L. Linnaeus,

49 JOHN WINGATE,
Attorney for Appellee.